

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5730 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KADARMIYA AHMEDMIYA MALEK

Versus

STATE OF GUJARAT

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Appearance:

MR SR PATEL, for Petitioner

MR KC SHAH, A.G.P., for Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu Kadarmiya Ahmedmiya Malek has brought under challenge the detention order passed against him on 6th April, 1996 rendered by the second respondent under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Page : 14 to the petition. They inter alia indicate that the petitioner detenu has been carrying on criminal and anti-social activities of selling country and foreign liquor and creating atmosphere of fear amongst the people. Following offences have been registered in Khambhat Rural and Khambhat City Police Stations :

1. CR No. 175/93 U/ss. 65A,E, 66B, 81/4, 83 of the  
Bombay Prohibition Act. 333  
bottles of foreign liquor and  
beer. Pending trial.
2. CR No. 295/95 U/ss. 66(1)(B), 65E, 81 of the  
Bombay Prohibition Act. 1960  
ltrs. of country liquor. Pending  
trial.

3. It is not in dispute that in the first offence the petitioner was arrested on 12.10.1993 and in the second offence he was arrested on 6.8.1995. Thus, the last offence is alleged to have been committed prior to 6.8.1995. The statements of witnesses are general in nature, first specifying the period of incident being around June, 1995, second specifying the period of incident around May, 1995, the third specifying the period of incident around April, 1995, 4th specifying the period of incident around July 1995 and the 5th specifying the period of incident around May, 1995. The statement of relevant dates or point of time is noted as it is submitted on behalf of the petitioner that continued detention of petitioner is required to be held illegal on the ground of delay. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State in this respect. The ground of delay appear in the petition as Ground No.(A).

4. Although there is no affidavit in reply to the aforesaid ground of delay it has been submitted by Mr. K.C.Shah, learned A.G.P. that the delay has stood explained by the fact that the witnesses have given their statements on or around 16.8.1995. Even if this explanation is accepted the ground of delay will not stand explained, since even after 16.8.1995 there is a passage of about 7 to 8 months before the impugned order of detention was passed. It is in the context of such facts that reliance has been placed on the decision of the Honourable Supreme Court in the case of P.N.Paturkar

V/s. S. Rama Murti, reported in A.I.R. 1994 SC 656. There the reference was made to an earlier decision of the Apex Court in the case of T.A.Abul Rahman v. State of Kerala, (1989) 4 SCC 741 : (AIR 1990 SC 225). Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of 5 months and 8 days from the date of registration of the last case and of more than 4 months from the submission of the proposal. The statements were obtained only after detenu became successful in getting bail in all the cases registered against him. As stated above in the present case there is sufficient delay so as to snap the live link between the prejudicial activity and the purpose of detention. It is under such circumstances that decision in P.N.Paturkar (Supra) would be applicable to the facts of the present case.

5. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision in P.N.Paturkar's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Kadarmiya

Ahmedmiya Malek shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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